

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

MONICA S. WHARTON a/k/a
MONICA S. MOSHENKO,

Plaintiff,

DECISION AND ORDER

07-CV-116A

v.

STATE UNIVERSITY OF NEW YORK
AT BUFFALO,

Defendant.

This case was referred to Magistrate Judge Jeremiah J. McCarthy, pursuant to 28 U.S.C. § 636(b)(1). On February 17, 2009, defendant filed a motion to dismiss for lack of prosecution. On July 24, 2009, Magistrate Judge McCarthy issued a Report and Recommendation (Dkt. No. 55) pertaining to this motion. Following a motion for reconsideration of that Report and Recommendation, defendant filed a motion to dismiss for lack of subject-matter jurisdiction (Dkt. No. 60) on August 14, 2009. On September 16, 2009, Magistrate Judge McCarthy issued a Report and Recommendation (Dkt. No. 66) regarding the second motion to dismiss. Plaintiff did not file responses to either motion or to either Report and Recommendation.

On September 29, 2009, the Court received a letter from plaintiff (Dkt. No. 69) requesting time to find another attorney. Plaintiff's letter prompted the Court

to issue an order (Dkt. No. 70) holding the Reports and Recommendations in abeyance until a status conference on December 11, 2009. Plaintiff was to appear at that status conference and to introduce new counsel or to be prepared to proceed *pro se*. On December 10, 2009, the Court received another letter from plaintiff (Dkt. No. 71) requesting more time to find an attorney. In response, the Court issued an order (Dkt. No. 72) holding the Reports and Recommendations in abeyance until a status conference scheduled for February 11, 2010. In this order, plaintiff was warned explicitly that no further extensions would be granted and that plaintiff had to be ready to proceed on her own if she did not have a new attorney by the status conference.

Instead of appearing at the status conference scheduled for February 11, 2010, plaintiff sent the Court another letter (Dkt. No. 73) again requesting an extension of time to find another attorney. By now, nearly five months have passed since the filing of Magistrate Judge McCarthy's second Report and Recommendation. The Court understands if plaintiff is looking for an attorney and is having trouble finding one. In issuing this Order, the Court accepts all of plaintiff's representations about her personal situation at face value.

Nonetheless, this Court presides over numerous cases involving *pro se* litigants, and cannot suspend them indefinitely because litigants would prefer to have an attorney and cannot find one. At this point, this case must resume moving forward.

Pursuant to 28 U.S.C. § 636(b)(1), this Court must make a *de novo* determination of those portions of the Reports and Recommendations to which objections have been made. Here, even though plaintiff never submitted responses to the pending Reports and Recommendations—which was why the Court held the case in abeyance for five months—it has conducted a *de novo* review anyway, in an abundance of caution and out of fairness to plaintiff. Upon a *de novo* review of the pending Reports and Recommendations, the Court adopts the first one (Dkt. No. 55) to the extent not superseded by the second one, and adopts the second one (Dkt. No. 66) in its entirety.

Accordingly, and for the reasons set forth in Magistrate Judge McCarthy's Reports and Recommendations, defendant's first motion to dismiss (Dkt. No. 51k kokay) is denied; and defendant's second motion to dismiss (Dkt. No. 60) is granted to the extent that plaintiff's ADA Title I and V claims, HRL claims, and Section 1981 claims are dismissed, but otherwise denied.

Additionally, the Clerk of the Court is directed to amend the caption to read as it appears above.

This case is referred back to Magistrate Judge McCarthy for further proceedings.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT JUDGE

DATED: February 17, 2010